

Robert Hammond

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July 25, 2017

Department of the Navy via FOIA Online, <https://foiaonline.regulations.gov/> and donfoia-pa@navy.mil

Subject: FOIA Request – All FY 2013 Quarterly FOIA Report Emails

Requester Personal Reference Number: FOIA DON 17-A

References: (a) The Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended,
(b) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011, “Your Right to Federal Records”
(c) The Privacy Act (“PA”) of 1974, 5 U.S.C. § 552a, *et seq.*, as amended
(d) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program
(e) DoD 5400.7-R, September 1998, DoD Freedom of Information Act (FOIA) Program
(f) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program
(g) DoD 6025.18-R, Jan. 24, 2003, DoD Health Information Privacy Regulation
(i) GAO Report GAO-12-828 of July 2012, subject Freedom of Information Act
(j) Department of Justice Handbook for Agency Annual Freedom of Information Act Reports

Dear FOIA Officer

I am submitting this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended. If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information and notify me of appeal procedures available under the law. References cited apply. Please see “preservation of records and searches performed” and “impact of improperly withholding records” below.

RECORDS SOUGHT VIA FOIA.

I am respectfully seeking for Fiscal Year 2013

1. The SOP – FOIA Quarterly Reports and Consolidation Process
2. All four quarterly FOIA Reports submissions emails for Fiscal Year 2013 to the DON PA/FOIA Office from any submitter.

3. This request also seeks a copy of this request (which is an agency record) returned in your reply.

BACKGROUND:

Records are likely in the possession of:

Robin Patterson
Head, DON PA/FOIA Office
Robin.Patterson@navy.mil
FOIA/PA Service Center 202-685-0412
or DONFOIA-PA@NAVY.MIL (FY 2013 email address)

Email subjects may include “FY13 1st FOIA Quarterly Report, etc.”

Data in the quarterly reports may include:

- A) FOIA requests received during quarter:
- b) FOIA requests processed during quarter:
- c) FOIA backlog at end of quarter:
- d) Status of 10 oldest backlogged cases reported on FY12 report

In your reply please separately address by the reference number above how your reply addresses each element of the records sought, including “no records found” for any specific record sought.

REQUESTED FORMAT. I am requesting that documents provided as a single PDF file by return mail via traceable means (i.e. certified mail) that 1) a signed and dated cover letter citing my personally assigned requester control number addressing only this FOIA request; 2) all responsive documents; 3) a copy of this request in your reply. This Request letter is an agency record in its own right and providing a copy of this request is an integral part of my FOIA request, which helps to ensure that you fully address my request. Please do not combine this request with any other request in your reply. I am requesting that each element of the records sought be specifically addressed in the DHA reply.

AGREEMENT TO PAY FEES. I agree to pay fees for searching or copying the records up to \$50. If the fees exceed this amount please advise me of the cost before proceeding. I do not believe that there should be any charge for providing these records, as there is public interest in government operations. I am a private individual not seeking documents for commercial use, such that the following applies: “No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge.” I would note that because I am requesting a PDF file, there should not be a per page copy fee. Moreover, there is public interest in the Performance standards of the Deputy General Counsel, Defense Health Agency.

PUBLIC INTEREST. The subject of the requested records concerns "the operations or activities of the government." The disclosure is "likely to contribute" to an understanding of government operations or activities. There is no commercial interest. There is significant public interest in the integrity of FOIA/ Privacy Act and certified mail processing procedures and the accuracy of FOIA reporting to the Attorney General of the United States and Privacy Act reporting to Congress.

DOD POLICY –PUBLIC TRUST.

Reference (c) states, "DoD personnel are expected to comply with the FOIA, this Regulation, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust."

IMPACT OF IMPROPERLY WITHHOLDING RECORDS

Pursuant to FOIA:

"Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends." 5 U.S.C. § 552(a)(4)(F)(i).

PRESERVATION OF RECORDS AND SEARCHES PERFORMED. Please preserve all responsive or potentially responsive records and records of your searches in your FOIA case file until the statutory date for judicial review has passed (should that be necessary) or in accordance with a NARA approved records schedule, if longer.

Records of responsive searches would include but not be limited to:

Searches conducted for each specific record sought and all other records known to the Agency, including dates, manner of searching, responsible agent or employee conducting each search and the results thereof.

LEGAL FRAMEWORK OF FOIA

1. The definition of "records" includes:
"[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made *or received*

by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.” 44 U.S.C. § 3301 (emphasis supplied).

2. FOIA requires that “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person” 5 U.S.C. § 552(a)(3)(A).

3. FOIA requires that “each agency shall establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request” 5 U.S.C. § 522(a)(7)(A).

4. FOIA requires that each agency shall “establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including the date on which the agency originally received the request; and an estimated date on which the agency will complete action on the request. 5 U.S.C. § 522(a)(7)(B).

5. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

6. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). *See also* 5 U.S.C. § 552(a)(6)(C).

7. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

8. Regarding the names of the FOIA requesters, the courts have held that under the FOIA requesters do not have an expectation of privacy. *Stauss v. IRS*, 516 F. Supp. 1218, 1223 (D.D.C. 1981),

9. Under FOIA, the federal agency has the burden of sustaining its actions. 5 U.S.C. § 552(a)(4)(B).

10. Pursuant to FOIA, a Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in an action thereunder. 5 U.S.C. § 552(a)(4)(E).

11. Department of Justice (DOJ) has issued a handbook addressing FOIA Annual Reports. *See* DOJ, *Handbook for Agency Annual Freedom of Information Act Reports*, “Disposition of FOIA Requests,” (available at http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/departments_handbook_for_agency_annual_freedom_of_information_act_reports.pdf) (“DOJ Handbook”).

12. Among other things, the DOJ Handbook states, “All requests (perfected and non-perfected), appeals, and consultations that were pending at any time during the relevant fiscal year [October 1st through September 30th] will be captured.”

13. The DOJ Handbook also states:

“[E]ach agency is ultimately responsible for the accuracy and completeness of its Annual FOIA Report. It is therefore essential for agencies to take steps that will ensure that they are adequately tracking all of the information necessary to complete the Annual FOIA Report sections detailed below. Agencies that utilize a tracking or case management system for this purpose are responsible for ensuring that the system they are using can produce an accurate Annual FOIA Report that is in compliance with the law and Department of Justice guidance.” DOJ Handbook, at 3.

I believe that I have adequately described the records that I am seeking. If you believe that my request is unclear, if you have any questions, or if there is anything else that you need from me to complete this request in a timely manner, please contact me in writing, so that I may perfect my request. If you deem that any portion of my request is unclear, answer the remaining portions and I will perfect a request for additional material as needed.

Thank you in advance.

With my respect,

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Robert Hammond